

1 THE HONORABLE RICARDO MARTINEZ

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KENNETH FLEMING and JOHN DOE,

11 Plaintiffs,

12 v.

13 THE CORPORATION OF THE PRESIDENT
14 OF THE CHURCH OF JESUS CHRIST OF
15 LATTER-DAY SAINTS, a Utah corporation
16 sole, a/d/a "MORMON CHURCH"; LDS
17 SOCIAL SERVICES a/d/a LDA FAMILY
18 SERVICES, a Utah corporation,

19 Defendants.

NO. C04-2338 RSM

LETTERS ROGATORY

20 United States District Court for the Western District of Washington to the Appropriate
21 Authority in British Columbia, Canada, Greetings:

22 WHEREAS, this proceeding is presently under the jurisdiction of and is now pending
23 before the United States District Court for the Western District of Washington; and

24 WHEREAS, it is found by this Court to be necessary for the purposes of justice and
25 for the preservation of testimony for trial, that the following person, eyewitness to the issue in
26 the underlying litigation, and now residing within your jurisdiction, should be examined under

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(C04-2338 RSM)
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1 oath relating to those matters, namely, Jack "Loholt", a/k/a Jack Onefrey (hereinafter, Jack
2 "Loholt" Onefrey), of Lac La Hache, B.C., Canada [*Postal Code*]; and

3 WHEREAS, having heard the argument of counsel, and having read the Declaration of
4 Steven T. Reich in support of the application for an Order issuing Letters Rogatory;

5 NOW I, Ricardo S. Martinez, Judge United States District Court for the Western
6 District of Washington, pursuant to FRCP 28(b), hereby request that, in furtherance of justice
7 and by the proper and usual process of your Court, you summon the attorneys or agents of the
8 party and the witness to be examined to attend at such time and place as you shall appoint,
9 either before you, or before such commissioner as according to your procedures is competent
10 to take evidentiary depositions of witnesses, and that you will cause the witness, on oath or
11 affirmation, to be examined orally for the giving of evidence and the production of documents
12 in his possession identified in the attached request, in the presence of the attorneys or agents
13 of the party or such of them as shall, on due notice given, attend the examination;

14 AND I FURTHER REQUEST that you appoint Len Doust, Q.C., or such other
15 Commissioner as the Court deems appropriate, as the Commissioner before whom the
16 evidence is to be taken;

17 AND I FURTHER REQUEST that you permit the attorneys or agents of any party
18 present, including members of the Washington Bar, to examine any witnesses called by him
19 and the attorneys or agents appearing party to cross-examine the witness and the attorneys or
20 agents.

21 WHEREAS, the testimony of the proposed deponent is necessary at the trial of this
22 action in order that this Court may render full and complete justice between the parties and for
23 the preservation of testimony for trial. In this action, the plaintiffs allege they were sexually
24 abused by Jack "Loholt" Onefrey when the plaintiffs were children. Jack "Loholt" Onefrey
25 was an employee of the defendant Corporation of the President of the Church of Jesus Christ
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1 of Latter-Day Saints during the times in which the abuse occurred. Jack "Loholt" Onefrey
2 received counseling for his sexual abuse problems from LDS Social Services (LDSSS)
3 Plaintiffs have filed claims against the Corporation of the President of the Church of Jesus
4 Christ of Latter-Day Saints & LDSS for their negligent conduct;

5 WHEREAS, the United States District Court for the Western District of Washington
6 has jurisdiction over the subject matter of this case, and is a competent court of law and equity
7 with the power to compel the attendance of witnesses and the production of documents by
8 corporations and individuals both in and outside its jurisdiction;

9 WHEREAS, plaintiffs seek to compel the testimony of Jack "Loholt" Onefrey, in
10 Lac La Hache, British Columbia, Canada, where he resides;

11 WHEREAS, plaintiffs seek testimony from Jack "Loholt" Onefrey regarding the abuse
12 of the plaintiffs, and the facts pertaining to his employment by the Corporation of the
13 President of the Church of Jesus Christ of Latter-Day Saints and involvement with LDSSS;

14 WHEREAS, the evidence sought from Jack "Loholt" Onefrey is relevant to the claims
15 of the plaintiffs in the case before the United States District Court for the Western District of
16 Washington;

17 WHEREAS, the evidence of Jack "Loholt" Onefrey is required for trial and pre-trial
18 purposes, and the evidence is necessary in the interest of justice to enable the United States
19 District Court for the Western District of Washington to determine the issues pending before
20 it;

21 WHEREAS, plaintiffs further seek any documents in Jack "Loholt" Onefrey's
22 possession, custody, or control that relate to his involvement with the plaintiffs, and his
23 employment with the defendant Corporation of the President of the Church of Jesus Christ of
24 Latter-Day Saints & LDSSS. The plaintiffs have identified Len Doust, Q.C., or such other
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1 Commissioner as the Court deems appropriate, as a Commissioner before whom Jack
2 "Loholt" Onefrey is to attend his deposition;

3 WHEREAS, the United States District Court for the Western District of Washington at
4 Seattle could reciprocate by granting enforcement of Letters Rogatory from a Canadian Court;

5 WHEREAS, the deposition of Jack "Loholt" Onefrey will be governed by the laws of
6 the State of Washington and the law of British Columbia, with the law of British Columbia
7 prevailing in the event of a conflict;

8 WHEREAS, the examination of Jack "Loholt" Onefrey will be under oath or solemn
9 affirmation and the witness will be required to give oral answers to question and plaintiffs will
10 be allowed to cross-examine the witness;

11 WHEREAS, if objection is taken to a question based on the laws of the State of
12 Washington, the objection will be noted on the record, the questions answered by the witness,
13 and the issue of admissibility reserved for the trial judge in the United States District Court
14 for the Western District of Washington;

15 We therefore request that in the interest of justice you cause by your proper and usual
16 process, said person to appear to be examined, and cause the evidence of said witness to be
17 recorded verbatim by a Court Reporter, and any documents produced on the examination to
18 be marked for identification, and that you authorize the Commissioner to authenticate the
19 deposition taken on the examination and any documents or certified copies produced.

20 WITNESS, Ricardo S. Martinez, Judge United States District Court for the Western
21 District of Washington, this 3rd day of October, 2005.

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24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE

26 [26313-00001]